

Jeffrey A. Mitchell  
Judith R. Cohen  
DICKSTEIN SHAPIRO LLP  
1633 Broadway  
New York, New York 10019-6708  
(212) 277-6500  
Attorneys for Plaintiff/Appellant

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re:

LEHMAN BROTHERS HOLDINGS, INC., et al.,  
  
Debtors.

Chapter 11

Case No. 08-13555 (SCC)  
Jointly Administered

In re:

LEHMAN BROTHERS, INC.,  
  
Debtor.

Case No. 08-01420 (SCC) SIPA

FIRSTBANK PUERTO RICO,  
  
Plaintiff,  
  
-against-  
  
BARCLAYS CAPITAL INC.,  
  
Defendant.

Adversary Proc. No. 10-04103 (SCC)

**APPELLANT FIRSTBANK PUERTO RICO'S STATEMENT OF ISSUES ON APPEAL  
AND DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL**

Appellant FirstBank Puerto Rico ("FirstBank"), by its attorneys Dickstein Shapiro LLP, pursuant to Fed. R. Bankr. P. 8006 submits the following designation of items to be included in the record on appeal and statement of issues to be presented on the appeal to the United States District Court for the Southern District of New York, pursuant to 28 U.S.C. § 158(a), from the Judgment for Barclays Capital, Inc. of United States Bankruptcy Judge James M. Peck entered on January 23, 2014 (Dkt. No. 91); the underlying Order Denying Motion of FirstBank Puerto

Rico for Summary Judgment, Granting Motion of Barclays Capital Inc. for Summary Judgment, and Setting Briefing Schedule for Motion of Barclays Capital Inc. for Civil Contempt Sanctions, dated May 23, 2013 (Dkt. No. 68); and the underlying Order Granting Motion of Barclays Capital Inc. for Civil Contempt Sanctions Against FirstBank Puerto Rico and Setting Amount of Award, dated January 23, 2014 (Dkt. No. 90).

### **STATEMENT OF ISSUES**

1. Whether the Bankruptcy Court erred in granting the motion by Barclays Capital Inc. (“Barclays”) for civil contempt sanctions against FirstBank Puerto Rico (“FirstBank”) for the reasons set forth in the Memorandum Decision Granting Motion For Civil Contempt Sanctions entered on December 3, 2013 (Dkt. No. 87).

2. Whether the Bankruptcy Court erred in determining that the Sale Order barred FirstBank’s claims.

3. Whether the Bankruptcy Court erred in determining that the Sale Order is specific, clear and unambiguous.

4. Whether the Bankruptcy Court erred in disregarding the determination by the District Court, Hon. George B. Daniels, U.S.D.J., denying the motion to dismiss by Barclays and permitting FirstBank to proceed with its claims, on the basis that the Court could not resolve the issue of whether the Sale Order barred FirstBank’s claims and whether the FirstBank Disputed Securities were Purchased Assets based on the pleadings alone or on the pleadings and the documents that were incorporated by reference and submitted to the court in connection with the motion to dismiss.

5. Whether the Bankruptcy Court erred in determining that the proof of FirstBank’s noncompliance was clear and convincing.

6. Whether the Bankruptcy Court erred in determining that FirstBank willfully disregarded the Sale Order injunction and made no diligent attempt to comply with that injunction.

7. Whether the Bankruptcy Court erred in determining that FirstBank was in contempt at all times from the inception of its action against Barclays.

8. Whether the Bankruptcy Court erred in awarding Barclays its reasonable counsel fees and costs incurred in defending against FirstBank's claims.

9. Whether the Bankruptcy Court erred in awarding Barclays its reasonable counsel fees and costs incurred in defending against FirstBank's claims from the inception of the action.

10. Whether the Bankruptcy Court erred in granting the Barclays motion and awarding Barclays civil contempt sanctions where the Bankruptcy Court accepted that FirstBank proceeded at all times in good faith.

11. Whether the Bankruptcy Court erred in enforcing the Sale Order's injunction against FirstBank, where FirstBank did not have notice of and was a stranger to the proceedings held to consider and approve the Sale Order and the underlying Clarification Letter in which the definition of Purchased Assets is set forth.

12. Whether the Bankruptcy Court erred in granting summary judgment in favor of Barclays and against FirstBank for the various reasons set forth in the Statement of Issues of Appeal and Designation of Items To Be Included in the Record on Appeal filed by FirstBank on June 19, 2013 (Dkt. No. 70) and incorporated herein by reference, such issues being:

a. Whether the Bankruptcy Court erred in granting summary judgment in favor of Barclays and against FirstBank for the reasons set forth in the Memorandum Decision

Denying Motion For Summary Judgment of FirstBank Puerto Rico and Granting Motion For Summary Judgment of Barclays Capital Inc. entered on May 10, 2013 (Dkt. No. 67).

b. Whether the Bankruptcy Court erred in determining that there were no material issues of disputed fact which precluded the entry of summary judgment in favor of Barclays.

c. Whether the Bankruptcy Court erred in determining that certain securities pledged by FirstBank as collateral (the “FB Collateral”) to Lehman Brothers Special Financing Inc. (“LBSF”) to secure SWAPs obligations under an ISDA Master Agreement constituted Purchased Assets under the Asset Purchase Agreement among Lehman Brothers Holdings, Inc. (“LBHI”), Lehman Brothers Inc. (“LBI”), LB 745 LLC and Barclays dated as of September 16, 2008 (the “APA”), and the Clarification Letter thereto dated September 20, 2008 (the “Clarification Letter”).

d. Whether the Bankruptcy Court erred in determining that the Sale Order barred FirstBank’s claims.

e. Whether the Bankruptcy Court erred in determining that internal repos within Lehman that moved the FB Collateral from LBSF to LBI gave LBI the legal right to their unrestricted use and made the FB Collateral “Securities owned by LBI,” to be transferred by the Sale Order, under all of the facts and circumstances set forth in the record.

f. Whether the Bankruptcy Court erred in failing to consider whether LBI’s sale of the FB Collateral to Barclays was a permitted use under the ISDA Master Agreement and Credit Support Annex between FirstBank and LBSF.

g. Whether the Bankruptcy Court erred in determining that LBI had the legal right to sell the FB Collateral under the Master Repurchase Agreement between LBSF and LBI (the “MRA”) when the MRA did not include “sale” among the list of authorized uses.

h. Whether the Bankruptcy Court erred in determining that FirstBank’s claims were prohibited by the Sale Order and its collateral deemed to be Purchased Assets to be transferred pursuant to the Sale Order, where the Sale Order and underlying documents were approved by the Court without notice to FirstBank that the FB Collateral would be affected, or giving it an opportunity to be heard before the FB Collateral was taken.

i. Whether the Bankruptcy Court erred in determining that FirstBank’s claim to the FB Collateral is not a claim for specifically identifiable property under New York law.

j. Whether the Bankruptcy Court erred in determining that FirstBank should have asserted claims against LBSF or LBHI, when New York law expressly permits a party to pursue a claim for conversion where that party may also have a claim for breach of contract against other parties.

k. Whether the Bankruptcy Court erred in weighing the evidence submitted by the parties and granting summary judgment based thereon, rather than leaving such consideration to the trier of fact.

**DESIGNATION OF ITEMS<sup>1</sup>**

<b>Date</b>	<b>Docket Number</b>	<b>Description</b>
10/28/2010	1	Copy of Certified Order Transferring Case No. 09CV10317 from the U.S. District Court, S.D.N.Y. to the U.S. Bankruptcy Court, S.D.N.Y. with attached docket report and documents
11/23/2010	4	Case Management Plan and Scheduling Order

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<sup>1</sup> To the extent any of the below listed documents contain exhibits or attachments that are not specifically described, all such exhibits and attachments are included in this designation.

Date	Docket Number	Description
4/5/2011	5	Amended Case Management Plan and Scheduling Order
04/05/2011	6	Confidentiality So Ordered Stipulation and Protective Order Signed on 4/5/2011 Between Barclays Capital Inc. and FirstBank Puerto Rico
8/10/2011	7	Second Amended Case Management Plan and Scheduling Order
12/8/2011	8	Third Amended Case Management Plan and Scheduling Order
4/2/2012	9	Fourth Amended Case Management Plan and Scheduling Order
7/18/2012	11	Fifth Amended Case Management Plan and Scheduling Order
09/13/2012	15	Notice of Motion for Summary Judgment of Defendant Barclays Capital Inc.
09/13/2012	16	Declaration of Boaz S. Morag in Support of Defendant Barclays Capital Inc.'s Motion for Summary Judgment [PLACEHOLDER PAGE, DOCUMENT FILED UNDER SEAL] <sup>2</sup>
09/13/2012	17	Memorandum of Law in Support of Barclays Capital Inc.'s Motion for Summary Judgment [PLACEHOLDER PAGE, DOCUMENT FILED UNDER SEAL]
09/13/2012	18	Barclays Capital Inc.'s Statement of Undisputed Facts Pursuant to Local Rule 7056-1 in Support of its Motion for Summary Judgment [PLACEHOLDER PAGE, DOCUMENT FILED UNDER SEAL]
09/13/2012	19	Stipulations of Fact [PLACEHOLDER PAGE, DOCUMENT FILED UNDER SEAL]
9/13/2012	20	Motion for Contempt /Notice of Motion of Defendant Barclays Capital Inc. for Civil Contempt Sanctions Against FirstBank Puerto Rico for Willful Violation of the Sale Order
9/13/2012	21	Declaration of Boaz S. Morag in Support of Defendant Barclays Capital Inc.'s Motion for Civil Contempt Sanctions Against FirstBank Puerto Rico for Willful Violation of the Sale Order [REDACTED] [PLACEHOLDER PAGE, DOCUMENT FILED UNDER SEAL]
9/13/2012	22	Memorandum of Law in Support of Barclays Capital Inc.'s Motion for Civil Contempt Sanctions Against FirstBank Puerto Rico for Willful Violation of the Sale Order [REDACTED] [PLACEHOLDER PAGE, DOCUMENT FILED UNDER SEAL]
09/13/2012	23	Motion for Summary Judgment on behalf of FirstBank Puerto Rico

<sup>2</sup> Placeholder pages were electronically filed to indicate those documents that were filed under seal.

<b>Date</b>	<b>Docket Number</b>	<b>Description</b>
09/13/2012	24	Statement of Undisputed Facts Pursuant to Local Bankruptcy Rule 7056-1 on behalf of FirstBank Puerto Rico [PLACEHOLDER PAGE, DOCUMENT FILED UNDER SEAL]
09/13/2012	25	Declaration of Judith R. Cohen in Support of Plaintiff's Motion for Summary Judgment [PLACEHOLDER PAGE, DOCUMENT FILED UNDER SEAL]
09/13/2012	26	Memorandum of Law in Support of Plaintiff's Motion for Summary Judgment [PLACEHOLDER PAGE, DOCUMENT FILED UNDER SEAL]
09/20/2012	29	Supplemental Declaration of Judith R. Cohen in Support of Plaintiff's Motion for Summary Judgment
10/2/2012	31	Memorandum of Law in Support of Barclays Capital Inc.'s Motion for Civil Contempt Sanctions Against FirstBank Puerto Rico for Willful Violation of the Sale Order
10/02/2012	32	Memorandum of Law in Support of Barclays Capital Inc.'s Motion for Summary Judgement [sic], dated September 13, 2012
10/02/2012	33	Memorandum of Law in Support of Plaintiff's Motion for Summary Judgment, dated September 13, 2012
10/10/2012	34	So Ordered Stipulation and Order Signed on 10/10/2012 Adjourning Contempt Motion Deadlines
10/15/2012	35	Memorandum of Law of Defendant Barclays Capital Inc. in Opposition to Motion of Plaintiff FirstBank Puerto Rico for Summary Judgment [PLACEHOLDER PAGE, DOCUMENT FILED UNDER SEAL]
10/15/2012	36	Declaration of Boaz S. Morag in Support of Defendant Barclays Capital Inc.'s Opposition to the Motion of Plaintiff FirstBank Puerto Rico for Summary Judgment [PLACEHOLDER PAGE, DOCUMENT FILED UNDER SEAL]
10/15/2012	37	Defendant Barclays Capital Inc.'s Statement of Additional Undisputed Material Facts Pursuant to Local Bankruptcy Rule 7056-1 [PLACEHOLDER PAGE, DOCUMENT FILED UNDER SEAL]
10/15/2012	38	Response of Defendant Barclays Capital Inc. to the Statement of Purportedly Undisputed Material Facts of Plaintiff FirstBank Puerto Rico Pursuant to Local Bankruptcy Rule 7056-1 [PLACEHOLDER PAGE, DOCUMENT FILED UNDER SEAL]

<b>Date</b>	<b>Docket Number</b>	<b>Description</b>
10/15/2012	39	Declaration of Judith R. Cohen in Opposition to Barclay Capital Inc.'s Motion for Summary Judgment and Exhibit 47 Thereto [PLACEHOLDER PAGE, DOCUMENT FILED UNDER SEAL]
10/15/2012	40	Plaintiff's Memorandum of Law in Opposition to Barclay Capital Inc.'s Motion for Summary Judgment [PLACEHOLDER PAGE, DOCUMENT FILED UNDER SEAL]
10/15/2012	41	Plaintiff's Responses to Barclay Capital Inc.'s Statement of Undisputed Facts Pursuant to Local Rule 7056-1 in Support of its Motion for Summary Judgment and Statement of Additional Material Facts [PLACEHOLDER PAGE, DOCUMENT FILED UNDER SEAL]
10/16/2012	45	FILED UNDER SEAL: Memorandum of Law of Defendant Barclays Capital Inc. in Opposition to Motion of Plaintiff FirstBank Puerto Rico for Summary Judgment
10/16/2012	46	FILED UNDER SEAL: Response of Defendant Barclays Capital Inc. to the Statement of Purportedly Undisputed Material Facts of Plaintiff FirstBank Puerto Rico Pursuant to Local Bankruptcy Rule 7056-1
10/16/2012	47	FILED UNDER SEAL: Defendant Barclays Capital Inc.'s Statement of Additional Undisputed Material Facts Pursuant to Local Bankruptcy Rule 7056-1
10/16/2012	48	FILED UNDER SEAL: Declaration of Boaz S. Morag in Support of Defendant Barclays Capital Inc.'s Opposition to the Motion of Plaintiff FirstBank Puerto Rico for Summary Judgment
10/19/2012	44	Memorandum of Law of Defendant Barclays Capital Inc. in Opposition to Motion of Plaintiff FirstBank Puerto Rico for Summary Judgment, dated October 15, 2012
10/22/2012	49	Memorandum of Law of Plaintiff FirstBank Puerto Rico in Opposition to Barclay Capital Inc.'s Motion for Summary Judgment, dated October 15, 2012
11/21/2012	52	Reply Declaration of Jeffrey A. Mitchell in Further Support of Plaintiff's Motion for Summary Judgment and Exhibits 48-51 Thereto [PLACEHOLDER PAGE, DOCUMENT FILED UNDER SEAL]
11/21/2012	53	Reply Memorandum of Defendant Barclays Capital Inc. in Support of its Motion for Summary Judgment [PLACEHOLDER PAGE, DOCUMENT FILED UNDER SEAL]



<b>Date</b>	<b>Docket Number</b>	<b>Description</b>
11/21/2012	54	Response of Defendant Barclays Capital Inc. to the Statement of Additional, Purportedly Undisputed Material Facts of Plaintiff FirstBank Puerto Rico Pursuant to Local Bankruptcy Rule 7056-1 [PLACEHOLDER PAGE, DOCUMENT FILED UNDER SEAL]
11/21/2012	55	Declaration of Catherine Hart [PLACEHOLDER PAGE, DOCUMENT FILED UNDER SEAL]
11/21/2012	56	Plaintiff's Responses to Defendant Barclays Capital Inc.'s Statement of Additional Undisputed Material Facts Pursuant to Local Bankruptcy Rule 7056-1 [PLACEHOLDER PAGE, DOCUMENT FILED UNDER SEAL]
11/21/2012	57	Reply Memorandum of Law in Further Support of Plaintiff's Motion for Summary Judgment [PLACEHOLDER PAGE, DOCUMENT FILED UNDER SEAL]
11/21/2012	63	(Filed Under Seal) Reply Memorandum of Defendant Barclays Capital Inc. in Support of its Motion for Summary Judgment by Lindsee P. Granfield on behalf of Barclays Capital, Inc. [PLACEHOLDER PAGE, DOCUMENT FILED UNDER SEAL]
11/21/2012	64	Response of Defendant Barclays Capital Inc. to the Statement of Additional, Purportedly Undisputed Material Facts of Plaintiff First Bank Puerto Rico Pursuant to Local Bankruptcy Rule 7056-1 (FILED UNDER SEAL) [PLACEHOLDER PAGE, DOCUMENT FILED UNDER SEAL]
11/21/2012	65	Declaration of Catherine Hart (FILED UNDER SEAL) filed by Catherine Hart
11/28/2012	60	Reply Memorandum of Law in Further Support of Plaintiff's Motion for Summary Judgment, dated November 21, 2012
11/28/2012	61	Reply Memorandum of Defendant Barclays Capital Inc. in Support of its Motion for Summary Judgment, dated November 21, 2012
01/25/2013	66	Transcript regarding Hearing Held on 01/16/2013 10:03 AM RE: Motion for Summary Judgment; FirstBank Puerto Rico Motion for Summary Judgment
05/10/2013	67	Memorandum Decision Signed on 5/10/2013 Denying Motion for Summary Judgment of FirstBank Puerto Rico and Granting Motion for Summary Judgment of Barclays Capital Inc.
05/23/2013	68	Order Signed on 5/23/2013 Denying Motion of FirstBank Puerto Rico for Summary Judgment, Granting Motion of Barclays Capital Inc. for Summary Judgment, and Setting Briefing Schedule of Barclays Capital Inc. for Civil Contempt Sanctions
06/05/2013	69	Notice of Appeal on behalf of FirstBank Puerto Rico

<b>Date</b>	<b>Docket Number</b>	<b>Description</b>
06/28/2013	71	Declaration in Opposition to the Motion by Defendant Barclays Capital Inc. for Civil Contempt Sanctions Against FirstBank Puerto Rico, filed by Jeffrey A. Mitchell on behalf of FirstBank Puerto Rico
06/28/2013	72	Memorandum of Law in Opposition to the Motion by Defendant Barclays Capital Inc. for Civil Contempt Sanctions Against FirstBank Puerto Rico- FILED UNDER SEAL [PLACEHOLDER PAGE, DOCUMENT FILED UNDER SEAL]
08/05/2013	77	Memorandum of Law / [REDACTED] Reply Memorandum of Law in Further Support of Barclays Capital Inc.'s Motion for Civil Contempt Sanctions Against FirstBank Puerto Rico for Willful Violation of the Sale Order [PLACEHOLDER PAGE, DOCUMENT FILED UNDER SEAL]
08/05/2013	78	Supplemental Declaration of Boaz S. Morag in Further Support of Defendant Barclays Capital Inc.'s Motion for Civil Contempt Sanctions Against FirstBank Puerto Rico for Willful Violation of the Sale Order, dated August 5, 2013 [PLACEHOLDER PAGE, DOCUMENT FILED UNDER SEAL]
08/06/2013	82	FILED UNDER SEAL: Reply Memorandum of Law in Further Support of Barclays Capital Inc.'s Motion for Civil Contempt Sanctions Against FirstBank Puerto Rico for Willful Violation of the Sale Order) [PLACEHOLDER PAGE, DOCUMENT FILED UNDER SEAL]
10/25/2013	86	Transcript regarding Hearing Held on 10/23/2013 10:04AM RE: Motion for Civil Contempt Sanctions.
12/03/2013	87	Memorandum Decision Signed on 12/3/2013 Granting Motion for Civil Contempt Sanctions
12/18/2013	88	So Ordered Stipulation and Order Signed on 12/18/2013 Extending Time to Meet and Confer
01/23/2014	89	So Ordered Stipulation and Order Signed on 1/23/2014 Concerning Entry of Order and Judgment
01/23/2014	90	Order Signed on 1/23/2014 Granting Motion of Barclays Capital Inc. for Civil Contempt Sanctions Against FirstBank Puerto Rico and Setting Amount of Award
01/23/2014	91	Judgment signed on 1/23/2014. JUDGMENT INDEX NUMBER BC 14,0014
02/05/2014	94	Notice of Appeal on behalf of FirstBank Puerto Rico
02/07/2014	95	Supersedeas Bond Issued by Travelers Casualty and Surety Company of America in the amount of \$2,775,450.00

Dated: New York, New York  
February 19, 2014

DICKSTEIN SHAPIRO LLP

By: s/Jeffrey A. Mitchell  
Jeffrey A. Mitchell  
Judith R. Cohen  
1633 Broadway  
New York, New York 10019-6708  
(212) 277-6500  
Attorneys for Plaintiff/Appellant  
FirstBank Puerto Rico